

CLERK'S COPY.

177

5/22/2009
Saf/

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 28

HERTHA J. SIBBACH, PETITIONER,

vs.

WILSON & COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 9, 1940.

CERTIORARI GRANTED APRIL 8, 1940.

BIank Page

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 28

HERTHA J. SIBBACH, PETITIONER,

vs.

WILSON & COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX.

	Page
Record from D. C. U. S., Northern District of Illinois.....	1
Agreed statement of facts.....	1
Statement of points relied upon on appeal.....	6
Certificate of judge	7
Certificate of clerk	7
Proceedings in U. S. C. C. A., Seventh Circuit.....	9
Clerk's certificate	9
Placita	11
Appearance for appellant.....	11
Appearance for appellee	12
Order taking cause under advisement.....	13
Opinion by Major, J.	14
Judgment affirming	18
Clerk's certificate	19
Order allowing certiorari	19

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 2, 1940.

Blank Page

Agreed Statement of Facts.

1

1 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois,
Eastern Division.

Hildegard Reinke, *et al.* }
vs. } No. 46814.
Wilson & Company, Inc. }

**AGREED STATEMENT OF FACTS ESSENTIAL TO
A DECISION BY THE CIRCUIT COURT OF AP-
PEALS.**

The following is an agreed statement of the case, showing how the questions arose and were decided in the District Court, and sets forth only so many of the facts averred and proved as are essential to a decision of the questions by the Circuit Court of Appeals.

This was a suit commenced in the United States District Court on November 24, 1937, against the defendant to recover damages for personal injuries.

The complaint alleged that on the 3rd day of September, A. D. 1937, the plaintiff Hertha Sibbach was injured in the State of Indiana through the negligent acts of the defendant, and as a result of said injuries she was greatly cut, wounded, lacerated, and contused in and about her head, body, arms, and legs, and divers bones in plaintiff's body were broken and fractured, and plaintiff became and was and has so remained from thence hitherto sick, sore, lame, diseased, and disordered, and has suffered great pain; all of which injuries plaintiff claimed were permanent and lasting. Plaintiff claimed that she had been and in the future will be hindered and prevented from earning and acquiring divers great gains and profits which she might otherwise have made and obtained; that the plaintiff became liable for and expended large sums of money, to-wit, Five Hundred (\$500) Dollars, endeavoring to be healed and cured of said injuries.

2 The plaintiff Hertha Sibbach claimed damages from the defendant in the sum of Ten Thousand (\$10,000) Dollars.

The defendant filed an answer to the complaint in which it denied each and every one of said allegations in the complaint.

Agreed Statement of Facts.

On the 6th day of May, 1939, the defendant filed a motion in Court, pursuant to the Federal Rules of Civil Procedure, Rule 35, in words and figures, as follows:

The defendant further moves the court for an order that each of the plaintiffs submit to a physical examination, including or together with an x-ray examination, before trial, by a physician or physicians to be appointed by this court, to determine the exact nature and extent of the injuries in controversy herein, alleged to have been sustained by them on the 3rd day of September, 1937, as the result of the act or acts alleged in plaintiff's amended complaint, at such time or times as this court may direct.

The defendant is informed and believes that it is essential to the proper trial of this case that each of the plaintiffs should submit to examination by deposition and to such physical examination, in advance of trial, as is more fully shown in the affidavit hereto attached in support of these motions.

In support of said motion, the defendant then and there also filed an affidavit in words and figures, as follows:

P. W. Seyl, being first duly sworn, on his oath states: That he resides at 320 Normal Parkway, Chicago, Illinois, and is the treasurer of the defendant in the above entitled cause; that the above cause of action was brought to recover damages alleged to have been sustained by the plaintiffs as the result of the alleged negligence of the defendant, for a more detailed statement of which reference is hereby made to the amended complaint filed in said cause, and that the cause is now at issue and pending trial upon the calendar of this court;

That the amended complaint alleges that each of the plaintiffs has been seriously injured and disabled; and that the physical condition of the plaintiff is in controversy and as to the truth of said allegations, the defendant has no means of knowing, other than by examination, by approved methods, the injuries complained of not being patent or clearly to be seen without such examination;

That in order properly to prepare this cause for trial and to proceed to trial with safety, it is necessary that the defendant be permitted to examine each of the plaintiffs by deposition prior to the trial of this cause concerning the facts and circumstances pertaining to the allegations set forth in said amended complaint and affiant is informed by the attorneys for the defendant and verily

believes, that defendant cannot fully prepare for trial unless an order is granted directing that each of the plaintiffs submit to a physical examination as requested, with leave to take x-ray photographs in conjunction with such physical examinations and the inspection of any x-ray photographs already taken or which may hereafter be taken of any of the plaintiff.

Wherefore, affiant respectfully requests that an order be entered herein directing each of the plaintiffs to appear for examination by deposition at such time and place specified in the motion to which this affidavit is attached and made a part thereof and that an order be entered directing each of the plaintiffs to appear at such time or times and place or places as are convenient to them and to the physician or physicians to be designated by the court and to submit to a physical examination by one or more of the physicians to be designated by the court and in conjunction therewith to permit x-ray photographs to be taken of the parts of the bodies of the respective plaintiffs alleged to have been injured and that the x-ray photographs, if any, which already have been made of the plaintiffs be produced for inspection by the defendant, and its attorneys or representative, and that the defendant have such other, further and different relief as may be proper.

Thereupon, on June 6th, 1939 the Court ordered the plaintiff, Hertha Sibbach, to submit to a physical examination by Dr. Guy V. Pontius (who was appointed by the Court as the examining physician), at his office at 104 South Michigan Avenue, Chicago, Illinois, on June 7, 1939.

The plaintiff, Hertha Sibbach, refused to submit to such physical examination by Dr. Guy V. Pontius, on June 7, 1939, and thereafter, on the 5th day of July, A. D. 1939, the defendant filed a petition in said proceeding, in words and figures, as follows:

1. That on motion of this defendant, each of the plaintiffs in this cause was ordered to submit to a physical examination by Dr. Guy V. Pontius at his office at 104 South Michigan Avenue, Chicago, Illinois.
2. That the plaintiff, Hertha Sibbach, was ordered by this court to submit to such physical examination by Dr. Guy V. Pontius on June 7, 1939.
3. That said plaintiff, Hertha Sibbach, failed to present herself for such physical examination at the time and place heretofore designated by this court and still fails

Agreed Statement of Facts.

and refuses to submit to such examination in disregard of the order of this court.

Wherefore, the defendant respectfully prays that a rule be entered on the plaintiff, Hertha Sibbach, to show cause why she should not be punished for contempt of this court in refusing to obey the aforesaid order of this court.

4 The Court thereupon entered a rule upon the plaintiff to show cause returnable July 6, 1939 why she should not be punished for contempt of Court in failing and refusing to submit to a physical examination as provided for by the order of Court entered on the 6th day of June, A. D. 1939.

On the 6th day of July, A. D. 1939, the plaintiff appearing in Court in person and by her attorney filed in Court her answer in words and figures, as follows:

Now comes the plaintiff, Hertha Sibbach, and for answer to the rule of Court entered herein upon her to show cause why she should not be punished for contempt of Court for failure to submit to a physical examination by Dr. Guy V. Pontius, on June 7, 1939, says:

1. This Court was without power to enter an order upon the plaintiff Hertha Sibbach to submit to a physical examination by Dr. Guy V. Pontius on the 7th day of June, 1939, because the inviolability of the person of the plaintiff would be invaded.

2. The Court is without power to require the plaintiff to submit to a physical examination by Dr. Guy V. Pontius on the 7th day of June, 1939, because such an order would be contrary to Section 34, of the Federal Judiciary Act of September 24, 1789, Chapter 20, 28 U. S. C. A. Section 725, inasmuch, as by the unwritten laws of the States of Illinois and Indiana, as declared by their highest Courts of those States the Courts have no power to compel the plaintiff in a personal injury case to submit to a physical examination.

3. The order of Court is contrary to the provisions of Article V, of the Constitution of the United States.

The plaintiff, Hertha Sibbach, therefore, prays that the rule entered upon her be discharged.

The said petition and answer came on for hearing in open Court on the 6th day of July, 1939, the plaintiff being present in Court, and the Court thereupon granted said petition and did on the 7th day of July, 1939, enter the following order:

This cause coming on further to be heard on the peti-

tion of the defendant, filed herein on July 5, 1939, for a rule on the plaintiff, Hertha Sibbach, to show cause why she should not be punished for contempt of this court in refusing to obey the order of this court in this cause entered on June 6, 1939, that she submit to a physical examination by Dr. Guy F. Pontius, at his office at 104 South Michigan Avenue, Chicago, Illinois, on June 7, 1939, as provided by the Rules of Civil Procedure for the District Courts of the United States, and it appearing to the court that counsel for the plaintiff, Hertha Sibbach, upon the filing of said petition, in open court, waived the necessity of a verification of defendant's said petition, consented to file an answer on behalf of ~~said~~ Hertha Sibbach to said petition, and that this court enter the aforesaid rule on said Hertha Sibbach returnable on July 6, 1939, at 10:00 A. M. before this court, and it further appearing to this court that said rule was so issued returnable on July 6, 1939, at 10:00 A. M. before this court, and that said Hertha Sibbach, in person and by and through her attorney, appeared in open court and filed her answer to the foregoing petition on July 6, 1939, at 10:00 A. M., and this court having considered the aforesaid petition and answer thereto, the arguments of counsel, and being fully advised in the premises, the court is of the opinion and Orders and Adjudges that said Hertha Sibbach is guilty of contempt in her disobedience of said order of this court hereinbefore entered on June 6, 1939, requiring her to submit to the aforesaid physical examination, by failing and neglecting without sufficient and legal cause or excuse therefor, to appear at the time and place designated in said order and to submit to such examination, and that, for her said contempt, said Hertha Sibbach, now being present in open court, be committed to the common jail of Cook County, in the State of Illinois, until she complies with the aforesaid order of this court or until she is otherwise legally discharged from custody.

To which ruling of the Court the plaintiff Hertha Sibbach excepted, and prayed an appeal from said order to the Circuit Court of Appeals for the Seventh Circuit.

Thereupon, on the 7th day of July, 1939, the plaintiff Hertha Sibbach filed her notice of appeal in words and figures, as follows:

Hertha J. Sibbach, Plaintiff in the above entitled cause, hereby files this her notice of appeal from the judgment of the District Court of the United States for the North-

ern District of Illinois Eastern Division to the Circuit Court of Appeals of the United States for the seventh circuit said judgment having been entered on the 7th day of July, 1939.

Filed
July 12
1939.

On the 12th day of July, 1939, the plaintiff Hertha Sibbach filed a statement of the points to be relied upon by the appellant Hertha Sibbach on her appeal to the Circuit Court of Appeals for the Seventh Circuit, in words and figures, as follows:

6 IN THE DISTRICT COURT OF THE UNITED STATES.

• • • (Caption—46814) • • •

STATEMENT OF POINTS UPON WHICH HERTHA SIBBACH, PLAINTIFF, INTENDS TO RELY ON THE APPEAL.

1. This Court was without power to enter an order upon the plaintiff Hertha Sibbach to submit to a physical examination by Dr. Guy V. Pontius on the 7th day of June, 1939, because the inviolability of the person of the plaintiff would be invaded.
2. The Court is without power to require the plaintiff to submit to a physical examination by Dr. Guy V. Pontius on the 7th day of June, 1939, because such an order would be contrary to Section 34, of the Federal Judiciary Act of September 24, 1789, Chapter 20, 28 U. S. C. A. Section 725, inasmuch, as by the unwritten laws of the States of Illinois and Indiana, as declared by their highest Courts of those States the Courts have no power to compel the plaintiff in a personal injury case to submit to a physical examination.
3. The order of Court is contrary to the provisions of Article V, of the Constitution of the United States.
4. The Court erred in entering an order depriving the plaintiff of her liberty without due process of law, as guaranteed by the Constitution of the United States.

Royal W. Irwin,
Attorney for Hertha Sibbach,
Plaintiff.

Certificate of Clerk.

7

7 It is agreed by and between the undersigned that the Clerk of the District Court shall include this statement in the record on appeal in lieu of designation of the contents of record on appeal, as provided by Rule 75 (a) of the Rules of Civil Procedure.

Royal W. Irwin,

*Attorney for Hertha Sibbach,
Appellant.*

Wilson & McIlvaine,

*Attorney for Wilson & Com-
pany, Inc., Appellee.*

Dated at Chicago, Illinois, July 12th, 1939.

I certify that the above statement of facts sets forth only so many facts averred and proved as are essential to a decision of the questions by the Circuit Court of Appeals. The statement conforms to the truth and is hereby approved.

Philip L. Sullivan,

Judge of the District Court.

8 Endorsed: In the District Court of the United States. * * * (Caption—46814) * * * Agreed Statement of Facts Essential to a Decision by the Circuit Court of Appeals and Proof of service Judge Sullivan July 12, 1939.

9 Northern District of Illinois, { ss.
Eastern Division.

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete Agreed Statement of Facts essential to a Decision by the United States Circuit Court of Appeals, filed July 12, A. D. 1939, in this Court in the case entitled—Hildegard Reinke, *et al. vs. Wilson & Company, Inc.* No. 46814, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 11th day of August, A. D. 1939.

Hoyt King,
Clerk.

(Seal)

10 Endorsed: Filed Aug 15 1939 Frederick G. Campbell, Clerk.

Blank Page

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 7, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the sixteenth day of August, 1939, upon which the following entitled cause was heard and determined:

Hertha J. Sibbach,
Plaintiff-Appellant,
vs.

Wilson & Company, Inc.,
Defendant-Appellee,

No. 7048, October Term, 1939, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 5th day of March, A. D. 1940.

Frederick G. Campbell,
(Seal) Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

Blank Page

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago and begun in the fourth day of October, in the year of our Lord one thousand nine hundred and thirty-eight, and of our Independence the one hundred and sixty-third.

And, to-wit: On the sixteenth day of August, 1939, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellant which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 7048.

October Term, 1939.

Hertha J. Sibbach,

U.S.

Wilson & Company, Inc.

The Clerk will enter my appearance as counsel for the plaintiff.

Royal W. Irwin,
160 N. La Salle—Fra. 5454.

Endorsed: Filed August 16, 1939. Frederick G. Campbell, Clerk.

Appearance for Appellee.

And afterwards, to-wit: On the thirteenth day of September, 1939, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
For the Seventh Circuit.

No. 7048.

Hertha J. Sibbach,
Plaintiff-Appellant,
vs.
Wilson & Company, Inc.,
Defendant-Appellee.

APPEARANCE.

We hereby enter our appearance in the above entitled cause as attorneys for Wilson & Company, Inc., Defendant-Appellee in the above entitled cause.

J. F. Dammann,
Kenneth F. Montgomery,
Sidney K. Jackson,
120 West Adams Street,
Tel: Andover 1212,
Chicago, Illinois.

Of Counsel:

Wilson & McIlvaine,
120 West Adams Street,
Chicago, Illinois,
Tel: Andover 1212.

Endorsed: Filed September 13, 1939. Frederick G.
Campbell, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand nine hundred and thirty-nine, and of our Independence the one hundred and sixtieth-fourth.

And, to-wit: On the thirtieth day of November, 1939, the following further proceedings were had and entered of record, to-wit:

Thursday, November 30, 1939.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

Hon. J. Earl Major, Circuit Judge.

Hon. Otto Kerner, Circuit Judge.

Hertha J. Sibbach,

Plaintiff-Appellant,

7048

vs.

Wilson & Company, Inc.,

Defendant-Appellee.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause comes on to be heard on the transcript of the record and briefs of counsel and on oral argument by Mr. Royal W. Irwin, counsel for Appellant, and by Mr. Kenneth F. Montgomery, counsel for Appellee, and the Court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the thirteenth day of December, 1939, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
For the Seventh Circuit.

No. 7048.

OCTOBER TERM AND SESSION, 1939.

HERTHA J. SIBBACH,

Plaintiff-Appellant,

vs.

WILSON & COMPANY, INC.,

Defendant-Appellee.

} Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

December 13, 1939.

Before SPARKS, MAJOR and KERNER, *Circuit Judges.*

MAJOR, *Circuit Judge.* The plaintiff was injured in an automobile accident on the 3rd day of September, 1937, in the State of Indiana, and brought suit on November 24, 1937 in the United States District Court for the Northern District of Illinois, to recover damages for personal injuries sustained thereby. On June 6, 1939, the Court ordered plaintiff to submit to a physical examination at a designated physician's office. The plaintiff refused and, upon motion by the defendant, a rule was entered upon the plaintiff to show cause why she should not be adjudged in contempt of court in refusing to obey such order.

The plaintiff answered that the Court was without power to enter such an order either under the Federal law or the law of the State of Illinois.

Upon the hearing, the court, on June 7, 1939, found the plaintiff guilty of contempt and ordered that she be committed to the common jail of Cook County until she complied with said order, or until she was otherwise legally discharged. It is from this order the appeal is here.

We are convinced that the ultimate question to be determined is the validity of Rule 35 (a) of the Rules of Civil Procedure, effective September 16, 1938, by virtue of a proclamation of the Supreme Court. If this rule is valid,

it undoubtedly furnishes the authority for the order in question.

Congress, by its enactment of June 19, 1934, (28 U. S. C. A. 723 b) empowered the Supreme Court to prescribe, by general rules, for the District Courts, "the forms of process, writs, pleadings and motions, and the practice and procedure in civil actions at law. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant. They shall take effect six months after their promulgation, and thereafter, all laws in conflict therewith shall be of no further force or effect." Section 723 c of the Enabling Act preserves the right of trial by jury as at common law, and declared by the Seventh Amendment to the Constitution and, that such rules "shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular session thereof, and until after the close of such session."

The rules of civil procedure, therefore were promulgated and given effect by reason of the authority contained in this Enabling Act. We do not understand any question is raised regarding the power of the Supreme Court to adopt rules consistent with this Act—in fact, it could not be disputed in view of the decisions of the Supreme Court approving the authority conferred by similar legislation. (*Wayman v. Southard*, 10 Wheaton 1; *Beers v. Haughton*, 9 Peters 329; 34 U. S. 329, 359.) It is argued here, however, the rule in question permits the invasion of a substantive right contrary to the language of the Enabling Act "nor modify the substantive rights of any litigant."

Plaintiff relies strongly—in fact, almost entirely upon the cases of *Union Pacific R. R. Co. v. Botsford*, 141 U. S. 250 and *Camden and Suburban R. R. Co. v. Stetson*, 177 U. S. 172, in support of her position that the court was without the power to enter the order complained of. Undoubtedly, these authorities sustain her position provided the law has not been changed by the rule under attack. If the rule is valid, it follows that the holdings in these cases must be abandoned.

We therefore return to the question as to whether the Supreme Court was empowered by Congress to adopt the rule in question, and whether it was so empowered involves a determination of whether the rule permits an invasion of a substantive right as that term was used by Congress in the Enabling Act. In making such determination, it seems material to refer briefly to the procedure both prior and subsequent to the adoption of the rules by the Supreme

Court. After the enactment of the Enabling Act, the Supreme Court appointed an Advisory Committee (302 U. S. 783) to assist it in the preparation of such rules. This committee consisted of many distinguished members of the bar, including a number of professors and deans of law schools of leading universities. The committee devoted about two and one-half years to the tasks assigned them. Tentative drafts were prepared and submitted to the judges and lawyers throughout the country, and after much discussion and many changes, the final draft was submitted to the Supreme Court on November 4, 1937. The court, after considering the draft and making such changes as it deemed advisable, transmitted the rules to the Attorney General of the United States, and they were by him reported to Congress at the beginning of the regular session in January, 1938. Congress, having taken no positive action in connection therewith, under the Statute heretofore quoted, the rules became effective.

Plaintiff, in her brief, states:

"It must be very apparent that the framers of the Rules of Civil Procedure were ill advised when this particular rule was included in the draft submitted to the Supreme Court."

We know of no justification for this statement, but if such there be, it would be of no avail to the plaintiff unless it also be concluded that both the court and Congress were likewise "ill advised." That the rules, including the one in controversy, were considered fully and at great length, both by the court and Congress, is apparent. That the court was aware of the language of the Enabling Act and of the powers conferred thereby, is not open to question. That Congress was familiar with the rules as transmitted to it, must at least be assumed. We think it must also be assumed that Congress, by its non-action, construed the rules as being within the power conferred. It follows, that regardless of prior court decisions holding to the contrary, both the Supreme Court and Congress have construed the right as not being substantive as that term was used in the Enabling Act. If we had any doubt otherwise (which we haven't) that the Supreme Court, in the adoption of the rule in question, was familiar with and considered its prior decisions in *Union Pacific R. R. Co. v. Botsford, supra*, and *Camden and Suburban R. R. Co. v. Stetson, supra*, that doubt is dispelled by the fact that those two cases were cited and discussed in the notes of the Advisory Committee. (See note following Rule 35, U. S. C. A.) We there-

fore conclude that the Supreme Court did not exceed the power conferred by Congress and that the rule is valid and has the effect of legislative enactment.

In addition to this construction by the Supreme Court and Congress, which we think decisive, we might add that there is grave doubt in our minds as to whether the right claimed in the instant case is a substantive one or not. In *Camden and Suburban R. R. Co. v. Stetson, supra*, one of the cases relied upon by plaintiff, it would seem the court indicated the contrary. On page 174, it said:

“ * * * It is not a question of a general nature, like the law merchant, but simply one concerning evidence based upon a local statute applicable to actions brought within the State to recover damages for injury to the person. * * * ”

The rule being valid, it must be given general application, irrespective of any State enactment or court decision to the contrary. There is no occasion, therefore, for us to determine the rule followed by the Illinois Courts. In any event, it is not applicable.

The order of the District Court is

AFFIRMED.

Endorsed: Filed December 13, 1939. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the thirteenth day of December, 1939, the following further proceedings were had and entered of record, to-wit:

Wednesday, December 13, 1939.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

Hertha J. Sibbach,

Plaintiff-Appellant,

7048

Wilson & Company, Inc.

Defendant-Appellee.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered and adjudged by this Court that the Judgment of the said District Court, in this cause be, and the same is hereby affirmed with costs.

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing 11 printed pages, numbered from 11 to 18, inclusive, contain a true copy of the proceedings had and papers filed, excepting briefs of counsel, in the case of

Hertha J. Sibbach,

Plaintiff-Appellant,

vs.

Wilson & Company, Inc.,

Defendant-Appellee,

No. 7048, October Term, 1939, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 5th day of March, A. D. 1940.

Frederick G. Campbell,

(Seal) *Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 8, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.